

FEB 21 2006

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

ANTHONY TISCARENO,

Defendant-Appellant.

No. 04-30527

D.C. No. CR-02-12-GF-SEH

MEMORANDUM*

Appeal from the United States District Court
for the District of Montana, Great Falls Division
Sam Haddon, District Judge, Presiding

Argued and Submitted October 18, 2005
Seattle, Washington

Before: CUDAHY**, T.G. NELSON and MCKEOWN, Circuit Judges.

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

** The Honorable Richard D. Cudahy, Senior Circuit Judge for the United States Court of Appeals for the Seventh Circuit, sitting by designation.

Anthony Tiscareno appeals his sentence of 327 months, imposed following his conviction of conspiring to distribute methamphetamine, in violation of 21 U.S.C. § 846, and the finding by a sentencing jury that he was an organizer, leader, or manager, pursuant to U.S.S.G. § 3B1.1(b).

Tiscareno was sentenced under the then-mandatory Sentencing Guidelines. The district court imposed an alternative sentence in light of *Blakely v. Washington*, 542 U.S. 296 (2004). However, this alternative sentence was imposed under the statute of conviction and did not follow the sentencing prescription set forth in *United States v. Booker*, 125 S. Ct. 738 (2005). Because we cannot reliably determine whether the district court would have given Tiscareno a materially different sentence had it known the sentencing scheme outlined in *Booker*, we remand this case to the district court to answer this question, pursuant to *United States v. Ameline*, 409 F.3d 1073 (9th Cir. 2005) (en banc).

REMANDED.